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EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/767,222

Applicant(s)

SCHNEIDMILLER, RODNEY G.

Examiner

Darren W. Ark

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,8-10,12-18 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,11,19-22,27-29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 3, 4, 8-10, 12-18, and 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/27/2004.
2. Applicant's election with traverse of Subspecies 6A and 1B in the reply filed on 12/27/2004 is acknowledged. The traversal is on the ground(s) that "it would not impose an undue burden on the Examiner to conduct a search that encompasses all of the subspecies of whisker orientation and whisker material...". This is not found persuasive because each of the species requires various unique aspects in its respective search that is not required for the search of the other species. If applicant is traversing on the grounds that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds on of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention(s).

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 6, 11, 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claims 6, 11, and 22, the specification does not disclose the strands with a diameter of in the range of .05mm to about 2.0mm or the strands with a length in the range of 13mm to about 150mm or the light bulb being located near the opening within a distance of approximately 155mm or less.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 7, the phrase "the strands...tip ends...the tip ends..." renders the claim vague and indefinite since the loops have proximal and distal ends only. The loop distal ends (38) cannot be considered as tip ends since they do not present tips at the distal ends thereof.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1, 2, 7, 19-21, 27, 29, 31-33 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Curnow et al. 2005/0102888.

Curnow et al. discloses a container (2, 3) with a first opening (upper part of 3, 11); a whisker assembly (5, 6) located at the opening (upper part of 3) and including a

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plurality of strands (mesh) that form loops (mesh is interconnected) that extend into the volume (see Fig. 1); a light assembly (14); and a chemical attractant (water).

In regard to claim 7, Curnow et al. discloses distal ends of the strands defining an opening (5 defines at least one opening in the mesh which is substantially smaller than the first opening) that is smaller in size than the first opening (upper part of 3, 11).

In regard to claim 21, see upper portion (4, 7).

In regard to claim 27, see page 1, paragraph 8.

In regard to claim 29, see page 2, paragraph 37.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 6, 11, 22, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curnow et al. 2005/0102888.

In regard to claims 5 and 33, Curnow et al. does not disclose the strands made of a material including at least one of polypropylene, nylon, acrylic and ethylene vinyl acetate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the strands of a material including at least one of polypropylene, nylon, acrylic and ethylene vinyl acetate, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of

its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regard to claims 6, 11, and 22, Curnow et al. does not disclose the strands with a diameter of in the range of .05mm to about 2.0mm or the strands with a length in the range of 13mm to about 150mm or the light bulb being located near the opening within a distance of approximately 155mm or less. It would have been an obvious matter of design choice to make the strands with a diameter of in the range of .05mm to about 2.0mm, the strands with a length in the range of 13mm to about 150mm, and the light bulb being located near the opening within a distance of approximately 155mm or less since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and because a person of ordinary skill in the art would readily design the size of each component according to the ultimate size of the entire device and the size of the insects to be captured.

11. Claims 27, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curnow et al. 2005/0102888 in view of Spiro et al. 6,662,489.

Curnow et al. discloses the use of ultraviolet light and that the light emits radiation at a wavelength which attracts a specific insect, but does not disclose the use of a light-emitting diode emitting light in the frequency range of about 380-565nm. Spiro et al. discloses an insect trapping apparatus which uses blue light-emitting diodes (140; blue light is approximately at 450nm). It would have been obvious to a person of ordinary skill in the art to modify the device of Curnow et al. such that it utilizes blue light-emitting diodes in view of Spiro et al. in order to provide a specific wavelength of

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light which will attract the desired insect and also to provide a source of light which consumes a small amount of power.

12. Claims 1, 2, 5-7, 11, 19-22, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mah 6,134,826 in view of Macmenigall 5,226,254.

Mah discloses a container (11) with a first opening (front of 13 or 33); a funnel (31) located at the opening (13 or 33); a light assembly (21); but does not disclose a whisker assembly comprising strands that form loops or a chemical attractant in the container volume. Macmenigall discloses a container (14) with bait therein and a whisker assembly (18, 23) comprising strands (mesh formation) that form loops (apertures formed by the mesh including hole 18). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Mah such that its funnel was substituted for the conical mesh formation of Macmenigall in order to provide both means for further attracting the insects by appealing to their sense of smell and an exit restricting means which are more easily formed out of mesh material rather than solid structure requiring more intensive manufacturing techniques.

In regard to claims 5 and 33, Curnow et al. does not disclose the strands made of a material including at least one of polypropylene, nylon, acrylic and ethylene vinyl acetate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the strands of a material including at least one of polypropylene, nylon, acrylic and ethylene vinyl acetate, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of



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its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regard to claims 6, 11, and 22, Curnow et al. does not disclose the strands with a diameter of in the range of .05mm to about 2.0mm or the strands with a length in the range of 13mm to about 150mm or the light bulb being located near the opening within a distance of approximately 155mm or less. It would have been an obvious matter of design choice to make the strands with a diameter of in the range of .05mm to about 2.0mm, the strands with a length in the range of 13mm to about 150mm, and the light bulb being located near the opening within a distance of approximately 155mm or less since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and because a person of ordinary skill in the art would readily design the size of each component according to the ultimate size of the entire device and the size of the insects to be captured.

13. Claims 27, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mah 6,134,826 in view of Macmenigall 5,226,254 as applied to claim 1 above, and further in view of Spiro et al. 6,662,489.

Mah and Macmenigall discloses the use of ultraviolet light bulbs and incandescent or fluorescent light, but does not disclose the use of a light-emitting diode emitting light in the frequency range of about 380-565nm. Spiro et al. discloses an insect trapping apparatus which uses blue light-emitting diodes (140; blue light is approximately at 450nm). It would have been obvious to a person of ordinary skill in the art to modify the device of Mah and Macmenigall such that it utilizes blue light-emitting

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diodes in view of Spiro et al. in order to provide a specific wavelength of light which will attract the desired insect and also to provide a source of light which consumes a small amount of power.

14. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah 6,134,826 in view of Macmenigall 5,226,254 as applied to claim 1 above, and further in view of Vascocu 6,421,952.

Mah and Macmenigall do not disclose the light assembly further including a photosensitive device. Vascocu discloses a photosensitive device (photo-electric eye 30) for turning an insect attracting and exterminating apparatus on when it becomes dark. It would have been obvious to a person of ordinary skill in the art to modify the trap of Mah and Macmenigall such that there is a photosensitive device in view of Vascocu in order to provide means for automatically activating the apparatus when it is dark and the targeted insects are active.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holt 1,040,329 discloses a whisker assembly (see Figs. 4, 5) with a plurality of strands (33, 34) which form loops (see Figs. 4, 5); Earle 1,613,652 discloses a whisker assembly (7) with a plurality of strands (wire catcher bars) which form loops (see Fig. 2); Umstatter 1,134,428 discloses a whisker assembly (h) with a plurality of strands ( $h^2$  and mesh) which form loops ( $h^2$  forms triangular loops and mesh forms loops).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA